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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO.136 OF 2015
WITH
CIVIL APPLICATION NO.178 OF 2015**

Ashok Bhikaji Kachare	...	Appellants
V/s.		
Municipal Corporation of Greater Mumbai	...	Respondent

Mr. Shrishail Sakhare, for the appellant.
Mrs. Madhuri More, for respondent corporation.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 1st NOVEMBER, 2018.

P.C. :

- 1] Heard learned counsel for the appellant and respondent.
- 2] This Appeal is directed against the order dated 25.1.2014, passed by the City Civil Court, Mumbai, thereby refusing ad-interim relief in the Notice of Motion No.2671 of 2014 in Suit No.2656 of 2014.
- 3] The said Notice of Motion and the suit was filed by the present appellant herein challenging the Notice issued by the Municipal Corporation under Section 351 of the Mumbai Municipal Corporation Act, calling upon the appellant to remove Extension of structure with B.M.Wall and A.C. sheet roof admeasuring 6' 6" x 6' 6" and 6' x 6', as shown in the sketch.

4] As per case of the appellant he has purchased the suit premises from MHADA in the year 1984 and since then, as stated in the plaint, he is in possession of the area of the premises admeasuring 180 sq. feet consisting of B.M. Walls with A.C. sheet roof and carrying on the business in the name and style of M/s Yogi For Men. It is his further contention that he has not carried out any extension. But only at the instance of another member of the society, namely Govind Gopal Salunke, respondent Municipal Corporation has issued the impugned notice. Earlier also, this Salunke had filed suit which came to be dismissed. Again on his instigation, the impugned notice is issued. Hence, the appellant has approached the trial Court. However, the trial Court has refused to grant ad-interim relief, even when the Municipal Corporation has not filed reply to this Notice of Motion. It is urged that he has produced on record various documents namely Ration Card, Electricity Bill, photocopy of shop and establishment licence, to show that he is running business in the suit premises since the year 1986. In the notice, the description of original structure which is standing is also not given. In such situation the trial Court should not have refused ad-interim relief, keeping the Notice of Motion pending.

5] To substantiate this submission, learned counsel for appellant has placed reliance on the judgment of this Court, in

Masood Ahmed Siddiqui -vs- Mumbai Municipal Corporation and ors
in Appeal from Order No.57 of 2013 dated 23.1.2013. It is urged that
in the said judgment, this Court has categorically held that without
reply being filed by respondent corporation on record and without
considering the each and every document produced by the plaintiff, it
would not be proper on the part of the trial Court to refuse the order
of ad-interim relief.

6] Here in the case also, it is urged that, in the light of this
judgment, the trial Court should have insisted on respondent
corporation to file reply before passing the impugned order.

7] In my considered opinion, this judgment cannot be of any
help or assistance to the appellant as the order passed by the trial
Court clearly goes to prove that, the trial Court has passed this order
on the admitted facts and had not rejected the ad-interim relief, in
respect of entire structure in possession of the appellant. It is
pertinent to note that the impugned notice is issued to the appellant
only in respect of the extension, which he has carried out and the
details of which are mentioned in the said notice.

8] As regards the original structure, of which he is in
possession, as stated by him in the plaint itself and which is
admeasuring 180 sq. feet only, the trial Court has protected the said
structure. The trial Court has categorically observed that, "the

Municipal Corporation has made statement before the Court that they are ready to protect the area of 180 sq. feet, of suit premises” as per contention of plaintiff and in view of said submission, the trial Court passed the following order;-

Order

1. Defendant /MMC is directed not to demolish the suit premises under the impugned Notice dated 3.7.2014, and order dated 31.10.2014, passed thereof only to the extent of area of 180 sq. feet of suit premises.

2. It is made clear that if it is found that plaintiff has carried out additional construction more than area of 180 sq. feet of suit premises, defendant /MMC will be at liberty to demolish the same.

N/M be registered and made returnable on 11.2.2015”

9] As the Notice was also in respect of extension work and not in respect of premises in occupation of the appellant which were as per his own admission to the extent of 180 sq feet, which the Municipal Corporation has also undertaken to protect, no fault can be found in the impugned order passed by the trial Court. If according to own case of appellant, that he is in possession of only 180 sq feet, he should not have any grievance, if Municipal Corporation is demolishing or taking action in respect of the extended construction which was found on the site and in respect of which the impugned

notice was issued. There is absolutely no case made out by the learned counsel for the appellant to interfere in the impugned order passed by the trial Court.

10] The Appeal being without merit, stands dismissed.

11] In view of dismissal of Appeal itself, pending Civil Application therein no more survives and the same is accordingly disposed off.

12] At this stage, learned counsel for appellant requests for extension of status quo granted in this Appeal.

13] Learned counsel for respondent corporation strongly resisted the same.

14] Hence, once the Appeal is dismissed on merits, there is no question of extension of status quo. This request, therefore, stands rejected.

[DR.SHALINI PHANSALKAR-JOSHI, J.]